

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6078 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LALSINH V VASAVA

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR PB MAJMUDAR for Petitioner
MR HL JANI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. Challenge is made by the petitioner in this Special Civil Application to the action of the respondent demanding from him the market rent for the period during which he unauthorisedly occupied the Government premises which has been allotted to him while in Government service. Earlier the petitioner has come up before this

Court by filing Special Civil Application No.113 of 1985 and that writ petition has been withdrawn by him with liberty to file representation to the Government. The petitioner was unauthorisedly occupying the Government quarter and possession thereof was taken by the authority. For unauthorised occupation, naturally the petitioner has to make payment at the market rate to which no exception can be made. The petitioner was an employee in police department and he has taken law in his own hands. Instead of acting as a law abiding citizen by vacating the Government quarter immediately on his transfer, he unauthorisedly retained the same. It would have been serious misconduct and I fail to see any justification in the action of the respondent not to take departmental action against him. Though at one point of time, I thought of directing the respondents to initiate departmental inquiry against the petitioner, but it has been given out that the petitioner has retired long back and as such, I do not consider it to be appropriate to give this direction. The learned counsel for the petitioner has placed reliance on a decision of this Court given in Special Civil Application No.5111 of 1996 dated 3rd September, 1996, and contended that until the amount is determined after notice under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972, no recovery could have been effected. That decision proceeded on the concession given by the learned counsel for the respondent. Here is a case where earlier the petitioner has come up before this Court and he was found to be in unauthorised occupation of the quarter. Once he was held to be in unauthorised occupation, then what for show cause notice is required to be given. It is a distinguishable feature in this case. Otherwise also, as stated earlier, the petitioner, being a Government servant and more so, in the police department, should have voluntarily surrendered the possession of Government accommodation. For his overstay in the Government quarter, the department should have, considering it to be a grave and serious misconduct, and should have initiated proceedings against the petitioner. Here is a case where the petitioner was forcefully dispossessed and rightly so because he has no justification what to say a right to continue in occupation of the quarter after transfer. The peculiar facts of the case are that another police officer has entered in the possession of the quarter, i.e. Shri S.D.Mahajan. Shri Mahajan has also retired from the service. So no action is required to be taken. The Government has given in writing that only Rs.1,624/are to be recovered against the petitioner and rest of the amount has already been recovered from the

persons. Looking to the fact that the petitioner was in unauthorised occupation of that quarter and being a Government servant in police department, over stayed in the quarter after transfer, I do not consider it to be appropriate to interfere with the action taken against the petitioner. However, in view of the Purshis filed by respondents' counsel, the liability of the petitioner is restricted to Rs.1,624/- only. The respondent is directed to recover this amount from the petitioner in three equal monthly installments, first of which to be paid on 1st January 1997. The petitioner is directed to pay the amount of Rs.1,624/- in three equal monthly installments of which the first instalment shall be paid on 1st January 1997.

3. In the result, this writ petition stands disposed of in aforesaid terms with no order as to costs. Rule discharged accordingly.

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(sunil)